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CASE NOS.: 2000-LHC-2308  
2000-LHC-2309  
2000-LHC-2310

OWCP NOS.: 18-071683  
18-071684  
18-071685

*In the Matter of*

**MICHAEL C. WILLIS,**  
Claimant,  
v.

**TERMINAL MAINTENANCE CORP.,**  
Employer,  
and

**MAJESTIC INSURANCE COMPANY,**  
Insurer,  
and

**DIRECTOR, OWCP,**  
Party-in-Interest.

Appearances

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For the Claimant

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For the Employer

Before: **Paul A. Mapes**  
Administrative Law Judge

**DECISION AND ORDER AWARDING BENEFITS**

This case involves three claims under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.*, (hereinafter referred to as "the Longshore Act" or "the Act"). A trial

on the merits of these claims was held in Long Beach, California, on June 5 and 8, 2001. All parties except the Director were represented by counsel and the following exhibits were admitted into evidence: Claimant's Exhibits (CX) 1 to 11 and Employer's Exhibits (EX) A to Q.<sup>1</sup> Subsequently, the following post-trial depositions were received and admitted into evidence: deposition of Dr. Prakash Jay (CX 12), deposition of Dr. Peter Sliskovich (CX 13), deposition of Michael Outland (CX 14), deposition of Frank Pisano (EX R), and deposition of Randy Schwoeble (EX S).

## BACKGROUND

Michael C. Willis (hereinafter "the claimant") was born on April 11, 1947, and received an A.S. degree from a junior college in 1971. Tr. at 19, EX D at 23. Thereafter, he worked in the transportation industry, primarily as a mechanic and maintenance supervisor. Tr. at 20-23, EX E at 51-52, 57-58. In 1991, he began working for Marine Terminals as a maintenance superintendent. Tr. at 23. At that time, he was given a pre-employment physical by Dr. Peter D. Sliskovich, who thereafter became the claimant's primary care physician. Tr. at 25-26, CX 6 at 68, EX M at 241.

Several years after the claimant began working for Marine Terminals, the company created subsidiaries known as Deep Water Port Services and Terminal Maintenance Co., which then became the claimant's direct employers. EX R at 5-8, Tr. at 24-25, 34-35. During most of his employment by Marine Terminals and its subsidiaries, the claimant's primary job responsibility was the supervision of mechanics working at a waterfront facility operated by one of his employer's customers, Trans-Pacific Container Service Corporation (hereinafter "Tra-Pac"). Tr. at 24, EX R at 5. As manager of maintenance and repair at the Tra-Pac facility, the claimant was responsible for ensuring that the approximately 25 mechanics under his supervision properly did their jobs. Tr. at 35-37.

According to the claimant's testimony, during his employment at the Tra-Pac facility he suffered psychological stress from three different sources.

First, he testified, he experienced stress as a result of trying to get the mechanics to properly do their jobs without having to resort to measures that would provoke the mechanics' union into calling retaliatory strikes and walkouts against his facility. Tr. at 39- 45, 54. This stress, he asserted, was exacerbated by limits on the number of mechanics he could assign to certain jobs and by the frequent threats of Tra-Pac's regional manager, Frank Pisano, to hire a different firm to provide maintenance and repair services. Tr. at 98-99, 122.

A second source of stress, the claimant asserts, was the high number of hours he had to work during periods when he did not have the assistance of a superintendent. According to the claimant, for the first year he worked at the Tra-Pac facility, he had to work six and three-quarter days per week. Tr. at

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<sup>1</sup>However, only pages 183 and 190-91 of Employer Exhibit K were admitted into evidence.

45-46, 54. The next year (1994), he was allowed to hire an assistant and the claimant was thus able to take off every other weekend. Tr. at 46-47. However, the claimant testified, during his employment at the Tra-Pac facility, he had to replace his assistant three times and each time he had to work seven days a week during the periods when the position was vacant. Tr. at 38-53. In one instance, he added, it took approximately three months to fill the job. Tr. at 51.

According to the claimant, the third source of stress in his job arose in June or July of 1998 when union officials made an allegation that the claimant had been stealing parts from Tra-Pac and running an off-dock mechanic's shop. Tr. at 55-59, CX 5 at 24, EX E at 63. Although neither Tra-Pac nor the claimant's supervisor took the allegations seriously, the claimant asserts that he was "really upset" and in a "constant rage" because the accusations were untrue and would be spread "throughout the harbor." Tr. at 58-66, 103-04. The claimant further asserts that mechanics under his supervision would occasionally "needle" him about the allegations and that the needling continued until around Christmas of 1998. Tr. at 62-66. The claimant's assertions are partially corroborated by one of his former assistants, Michael Outland, who testified that when he informed the claimant of the allegations, he "seemed pretty upset" and said he intended to contact an attorney. CX 14 at 13-15. Likewise, the president of Deep Water Port Services, Randy Schwoeble, and Tra-Pac's regional manager, Frank Pisano, both testified that the claimant spoke angrily to them about the allegations. EX 5 at 16 (testimony of Randy Schwoeble), EX R at 22-23 (testimony of Frank Pisano).

According to the claimant's testimony and medical records, he first experienced symptoms of a possible stroke in September of 1998, when he briefly felt a sudden numbness and loss of control in his right arm. Tr. at 82-83, EX C at 18, EX E at 52-53.

On October 29, 1998, the claimant sought treatment from Dr. Sliskovich for what was contemporaneously described in Dr. Sliskovich's notes as "ringing in ears, dizzy and anxiety." CX 6 at 65. These same notes further indicate that the claimant's blood pressure was recorded as being 170/110. According to Dr. Sliskovich's deposition testimony, he recalls that when the claimant came to see him on that day, he was "very upset" and was literally "shaking." EX M at 222. Dr. Sliskovich also recalled that the claimant was upset because at work he had "been accused of theft or something." *Id.*, CX 6 at 42. Dr. Sliskovich treated the claimant by prescribing high blood pressure and anti-anxiety medications. *Id.*, CX 6 at 42, Tr. at 96-97, 115-18.

On November 4, 1998, the claimant was again seen by Dr. Sliskovich, who measured the claimant's blood pressure as being 150/90 and noted that he was still complaining of "ringing in ears and dizziness." EX M at 223, CX 6 at 63. Such symptoms, Dr. Sliskovich testified, can be caused by hypertension. EX M at 223. During this visit and other visits over the next several months, Dr. Sliskovich recalled, the claimant continued to complain of problems at work. EX M at 223, 234, 228. According to Dr. Sliskovich, during December of 1998 he gave the claimant a complete physical which, among other things, included a chest x-ray and an EKG. EX M at 223-224. The EKG, he testified, showed

“hypertension with left ventricular hypertrophy” and the chest x-ray revealed “some slight enlargement on the heart also consistent with hypertension of a semi-longstanding nature.” EX M at 221, 224.

In early February of 1999, the claimant’s assistant, Michael Outland, told him that he was taking a new job. Tr. at 52-53, 55-56, EX E at 65. According to the claimant, he felt “destroyed” by this news because he believed that after Mr. Outland left, he would again have to work seven days a week and 10 hours a day until a new assistant was hired. Tr. at 52-53.

On the morning of February 16, 1999, the claimant awoke with severe left shoulder pain and immediately sought treatment from Dr. Sliskovich. CX 5 at 22, CX 6 at 62. Dr. Sliskovich concluded that the claimant had an impingement in his left shoulder and prescribed an anti-inflammatory medication. EX E at 68, EX M at 225. No record was made of the claimant’s blood pressure at the time of this visit and it was apparently not measured. EX M at 225.

The claimant returned to Dr. Sliskovich on February 23, 1999 and reported that he was experiencing pain in his left shoulder, heaviness in his left foot, and numbness in his left big toe. CX 6 at 61. Consequently, on the same day, Dr. Sliskovich referred the claimant for a CT scan of his brain. CX 5 at 22. According to the February 24, 1999 report of Dr. Majid Molaie, a board-certified neurologist, the CT scan revealed evidence of an “ischemic infarction” (i.e., a stroke) in the right frontal cortical area of the claimant’s brain. EX L at 211. On that same day, Dr. Molaie recorded the claimant’s blood pressure as being 170/85. EX L at 212. On March 1, 1999, the claimant underwent a carotid duplex scan at the request of Dr. Molaie. EX L at 214. The scan revealed a “total or subtotal occlusion of the left internal carotid vessel.” *Id.*

Despite his condition, the claimant missed only one day of work following his February stroke and was able to carry out his normal activities of daily living. EX F at 132, EX E at 65, Tr. at 75, 80. Nonetheless, the claimant testified, there were still some physical aspects of his job, such as ladder climbing and occasional lifting, that he was no longer able to perform. Tr. at 76-77.

On March 24, 1999 the claimant was seen by Dr. Mary Kalafut, a neurologist who was then working in the UCLA Stroke and Vascular Neurology Clinic. EX F at 132. In a report written that same day, Dr. Kalafut concluded that the claimant had probably suffered “a right frontal infarction secondary to a right ICA [internal carotid artery] occlusion.” EX F at 134. She suggested that the etiology was likely to be “atherosclerotic disease” but recommended that other etiologies such as a cardiembolic disease be considered. *Id.* In addition, she ordered further tests including a blood test and a MRI. *Id.* The MRI, which was performed on April 1, 1999, revealed “bilateral posterior frontal infarcts.” EX F at 123. Likewise, a CT scan that was performed on April 5, 1999 also showed bilateral posterior frontal lobe infarctions. EX F at 125. Dr. Kalafut next saw the claimant on April 14, 1999. In her report of that same date, she noted that an angiogram performed on March 4, 1999 had shown that the claimant’s left internal carotid artery was “completely occluded.” EX F at 146, 147, 150. She recommended to Dr. Sliskovich that the claimant begin taking a blood thinning drug known as Coumadin and continue reducing risk factors

by “smoking cessation, exercise and aggressive hypertension control.” EX F at 150. Dr. Kalafut also referred the claimant to Dr. Michael H. Rosove, a specialist in hematology and medical oncology, to determine if the claimant had any blood conditions that might have contributed to his stroke. EX F at 130-31.

Dr. Rosove later sent two reports to Dr. Kalafut. In the first report, which is dated May 4, 1999, Dr. Rosove noted that tests of the claimant’s blood had shown the presence of anti-phospholipids and that these tests results “lend some credence to the notion that this is a contributing, if not principal problem.” EX F at 130-31. In the second report, which was issued on May 22, 1999, Dr. Rosove indicated that further blood tests had shown that the results of a previous VDRL test had been a “false positive” and that the new blood test results had led him to conclude that “the situation is quite compatible with the antiphospholipid syndrome.” EX F at 129.

Dr. Kalafut next saw the claimant on June 9, 1999. EX F at 148. In her report to Dr. Sliskovich, she described the claimant as having a “hypercoagulable state including antiphospholipid antibody syndrome” and recommended that Dr. Sliskovich continue the claimant’s Coumadin prescription for the purpose of achieving a “target INR of 3-4.” *Id.* at 149. In addition, she reported that the claimant “has been able to carry out his duties at work without any problems.” *Id.* at 148. The claimant’s blood pressure at the time of that visit was recorded as being 140/80. *Id.*

On or about August 26, 1999, the claimant and his new assistant, Don Eyman, met with Randy Schwoeble, who was then the president of Deep Water Port Services, in Mr. Schwoeble’s office. EX E at 69-74, EX K at 190-91, EX S at 3. According to a file memo that Mr. Schwoeble prepared the following month, the meeting’s purpose was to discuss discrepancies between the time sheets of the mechanics under the claimant’s supervision and Tra-Pac’s spare parts inventory. EX K at 190-91. Mr. Schwoeble’s memo further indicates that the claimant was told that overages of certain parts in Tra-Pac’s inventory suggested that the mechanics had been paid for work that had not in fact been performed. In addition, it was noted that the claimant was also told that changes in time sheet entries had raised suspicions that “several thousand dollars worth of freon” had been stolen. *Id.* According to the memo, the claimant was asked to explain why he had not questioned the changes in the time sheets, but “did not have an acceptable explanation.” EX K at 190. The memo further asserts that the claimant had been “confronted” on several prior occasions about excessive freon usage, but had done “nothing” about it. *Id.* at 191.

According to the claimant, on a work day sometime shortly after his meeting with Mr. Schwoeble, he felt a “popping” sensation in his back while helping Mr. Eyman move tools between two trucks. Tr. at 128-29, CX 5 at 22; CX 6 at 42, EX E at 68. In the morning of August 31, 1999, the claimant saw Dr. Sliskovich regarding his back condition. CX 6 at 56. At noon on that same day, Dr. Sliskovich wrote a note stating, “Mike Willis is under my care. He is recovering from a stroke and his situation has worsened lately such that he will need future [illegible]. I am [illegible] him off work for this purpose. I [illegible] 3-4 months.” CX 6 at 46. Later that day, according to the claimant, he was called at home by Mr. Schwoeble

and told that he was being fired. EX D at 24, Tr. at 93. The claimant's recollection is partially corroborated by Mr. Schwoeble's file memo concerning the meeting of August 26, 1999. According to that memo, the claimant "was terminated the week of August 30." EX K at 190-91. The same memo indicates that the termination occurred because Tra-Pac had "totally lost confidence" in the claimant's ability to manage and "insisted" that he be removed from its facility. *Id.* at 191. The memo also indicates that when the claimant arrived at the employer's office to pick up his final paycheck, he turned in a note from Dr. Sliskovich indicating that he had become disabled. *Id.* The claimant has not been employed in any type of job since August 31, 1999. CX 5 at 22, Tr. at 93.

On December 21, 1999, Dr. Sliskovich sent a letter to the claimant's attorney in which he represented that the claimant had been off work since August 31, 1999 because he had aggravated the weakness in his left side by lifting tools at work. CX 6 at 42. In the same letter, Dr. Sliskovich also opined that the claimant's hypertension had been "aggravated indeed" by his "somewhat hostile work environment." *Id.*

On May 17, 2000, the claimant was examined at the employer's request by Dr. James T. London, a board-certified orthopedic surgeon. EX C. In a May 23, 2000 report, Dr. London indicated that he was "unable to find any objective orthopedic pathologic findings in [the claimant's] cervical spine, thoracolumbar spine, upper or lower extremities that would relate to the 8/99 alleged industrial injury," but nonetheless opined that the claimant had suffered a "lumbosacral strain" as a result of that injury. *Id.* Dr. London recommended that the claimant have a MRI scan of his spine and be given another neurological examination. *Id.* at 20. On May 25, 2000, the claimant had a MRI performed on his spine. EX C at 15. After reviewing the MRI scan, Dr. London wrote an October 26, 2000 report in which he concluded, "I continue to be of the opinion that there are no objective orthopedic pathologic findings in his . . . [spine] that would explain [the] ongoing subjective symptoms or relate to the 8/31/99 alleged industrial injury." *Id.*

On December 18, 2000, Dr. Paul J. Grodan, who is board-certified in internal medicine and a specialist in cardiovascular diseases, conducted a medical examination of the claimant at the employer's request. EX D. In a February 21, 2001 report, Dr. Grodan described the results of the examination, summarized the claimant's medical history, and set forth his opinions concerning the etiology of the claimant's impairment. According to the report, it is Dr. Grodan's impression that the claimant suffers from a stroke syndrome which is secondary to "atheromatous left internal carotid artery occlusion, related to high homocystine and antiphospholipid antibody" and from hypertension that is "out of control." *Id.* at 30. Dr. Grodan further described the claimant's high homocystine and antiphospholipid antibody as constituting a "metabolic disorder, that leads to accelerated clotting and thrombotic occlusion of the artery." *Id.* at 32. Furthermore, he added, "internal carotid occlusion cannot occur due to occupational stress or work activities." He thus concluded that any residual disability associated with the claimant's stroke "will be non-industrial." *Id.* at 32. Dr. Grodan also concluded that he "did not find any evidence of either continuous trauma or specific injury leading to the stroke, the carotid artery occlusion nor causing/aggravating his blood pressure." *Id.* However, in the same report Dr. Grodan did acknowledge that carotid artery occlusion

occurs “in advanced atherosclerosis.” *Id.* at 32. Dr. Grodan also concluded that the claimant’s condition is permanent and stationary, and that he has a class III impairment as defined by the American Medical Association’s Guides to the Evaluation of Permanent Impairment. *Id.* at 33. In addition, Dr. Grodan asserted that the claimant was “obviously able to continue with his employment” following his stroke. *Id.* at 33.

On April 10, 2001, the claimant was examined at his counsel’s request by Dr. Prakash Jay, who is board-certified in internal medicine and preventive medicine. CX 5. On April 30, 2001 Dr. Jay issued a 17-page report in which he summarized the results of the physical exam, many of the claimant’s medical records, and the claimant’s own description of his work and medical history. According to Dr. Jay, his physical examination showed that the claimant had “moderate weakness in his left upper extremity and left lower extremity” as well as “moderate incoordination of his left upper extremity” and slight to moderate incoordination in his left lower extremity.” He also noted that the claimant’s stroke had caused him to walk with a cane and drag his left foot. Dr. Jay concluded that the “cumulative stress” of the claimant’s job “contributed to the development of his hypertension.” Furthermore, he opined, this “industrially related hypertension” and the claimant’s 20 years of cigarette smoking “contributed to total occlusion of left internal carotid artery and moderate stenosis of right internal carotid artery with plaquing, and intercranial cerebral vascular disease, as a result of which Mr. Willis suffered bilateral frontal infarcts.” In turn, he added, these infarcts caused the claimant’s left-side leg and arm weakness. Dr. Jay also concluded that because of the claimant’s left side weakness, he should be restricted to sedentary work and precluded from performing work requiring “lifting, pushing, pulling, or activities that require coordination, including fine motor movement of the left upper extremity.” In addition, Dr. Jay also opined that the claimant cannot return to work in “maritime maintenance” and, because of his hypertension, should be prophylactically precluded from working in “emotionally stressful environments.”

## ANALYSIS

The claimant and the employer have stipulated: (1) that all of the alleged injuries occurred at a maritime situs and while the claimant was employed in a maritime status, (2) that there was an employer-employee relationship at the time of the alleged injuries, (3) that the claimant’s average weekly wage is \$1,935.15, and (4) that the claimant’s injuries reached the point of maximum medical improvement on August 31, 1999. All of these stipulations have been found to be fully supported by the evidence and are hereby adopted as findings of fact. The following issues are in dispute: (1) the existence of any causal relationship between the claimant’s employment and his stroke-related impairments, (2) whether the claimant did in fact suffer a work-related injury while moving tools during late August of 1999, (3) the extent of the claimant’s entitlement to disability benefits, and (4) the employer’s entitlement to Special Fund relief.

For the reasons set forth below, I find: (1) that the claimant has presented sufficient evidence to warrant a finding that his stroke-related impairments were caused, accelerated, aggravated, or otherwise

permanently worsened by his employment, (2) that the claimant did in fact suffer a work-related injury in August of 1999, (3) that the claimant is entitled to permanent total disability benefits, and (4) that the employer is entitled to Special Fund relief.

#### 1. Causal Relationship between the Claimant's Employment and his Stroke-Related Impairments

Under the so-called "aggravation rule," a claimant seeking benefits under the Longshore Act does not have to show that a work injury was the sole cause or even the principal cause of a disability. Rather, a claimant need only show that an employment-related injury aggravated, accelerated, or combined with a pre-existing impairment. *Port of Portland v. Director, OWCP*, 932 F.2d 836, 839 (9<sup>th</sup> Cir. 1991). If a claimant is successful in making such a showing, his or her entire impairment is compensable. *Id.* When it is alleged that work-related stress caused, aggravated, or accelerated an injury, a Longshore Act claimant need not establish that the alleged stress was in some way extraordinary or unusual. Rather, even a slight amount of work-related stress can provide a valid basis for a Longshore Act claim if the stress was sufficient to cause an injury to the claimant. *Southern Stevedoring Co. v. Henderson*, 175 F.2d 863, 866 (5<sup>th</sup> Cir. 1949); *Bazor v. Boomstown Belle Casino*, 35 BRBS 121, 126 n. 3 (2001).

In this case, the claimant concedes that his stroke-related impairments have multiple causes, but contends these impairment are nonetheless compensable because they were aggravated, accelerated, or otherwise worsened by the physical and mental stresses of his job. In contrast, the employer contends that there is an inadequate factual basis for concluding that the claimant's work duties in any way caused, accelerated, or aggravated his impairments.

Insofar as the claimant contends that he suffered work-related injuries, he is aided by the provisions of subsection 20(a) of the Longshore Act, which provides that in proceedings to enforce a claim under the Act, "it shall be presumed, in the absence of substantial evidence to the contrary---(a) that the claim comes within the provisions of the Act...." In order to invoke this presumption, a claimant must produce evidence indicating that he or she suffered some harm or pain and that working conditions existed or an accident occurred that could have caused the harm or pain. *See Kelaita v. Triple A Machine Shop*, 13 BRBS 326 (1981). Thus, the presumption cannot be invoked if a claimant shows only that he or she suffers from some type of impairment. *See U.S. Industries/Federal Sheet Metal, Inc. v. Director, OWCP*, 455 U.S. 608 (1982). However, only "some evidence tending to establish" both prerequisites is required and it is not necessary to prove such prerequisites by a preponderance of the evidence. *Brown v. I.T.T./Continental Baking Co.*, 921 F.2d 289, 296 n.6 (D.C. Cir. 1990)(emphasis in original). Once the subsection 20(a) presumption has been properly invoked, the relevant employer is given the burden of presenting "substantial evidence" to counter the presumed relationship between the claimant's impairment and its alleged cause. *Dower v. General Dynamics Corp.*, 14 BRBS 324 (1981). If the presumption is rebutted, it falls out of the case and the administrative law judge must weigh all of the evidence and resolve the issue based on the record as a whole. *Hislop v. Marine Terminals Corp.*, 14 BRBS 927 (1982). Under the Supreme Court's decision in *Director, OWCP v. Greenwich Collieries*, 512 U.S. 267 (1994), the ultimate burden of proof then rests on the claimant. *See also Holmes v. Universal Maritime Services Corp.*, 29 BRBS

18, 21 (1995). If the presumption is not rebutted with substantial evidence, a causal relationship between the worker's job and his or her impairment must be presumed. However, a subsection 20(a) presumption does not assist claimants in proving that any disability resulting from a work injury was in fact permanent. *Holton v. Independent Stevedoring Co.*, 14 BRBS 441 (1981); *Duncan v. Bethlehem Steel Corp.*, 12 BRBS 112 (1979).

In considering medical evidence concerning a worker's injury, a treating physician's opinion is entitled to "special weight." *Amos v. Director, OWCP*, 153 F.3d 1051 (9th Cir. 1998). In fact, in the Ninth Circuit clear and convincing reasons must be given for rejecting an *uncontroverted* opinion of a treating physician. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). However, the Ninth Circuit has also held that a treating physician's opinion is not necessarily conclusive and may in some circumstances be disregarded, even if uncontradicted. For example, an administrative law judge may reject a treating physician's opinion that is "brief and conclusionary in form with little in the way of clinical findings to support [its] conclusion." *Id.* In addition, an administrative law judge can reject the opinion of a treating physician which conflicts with the opinion of an examining physician, if the ALJ's decision sets forth "specific, legitimate reasons for doing so that are based on substantial evidence in the record." *Id.*

To support his contention that his employment aggravated, accelerated, or otherwise worsened his stroke-related impairments, the claimant relies on the medical opinions of Dr. Sliskovich, Dr. Kalafut, and Dr. Jay.

Dr. Sliskovich's opinions concerning the cause of the claimant's stroke-related impairments are primarily set forth in his deposition testimony of May 10, 2001. EX M. In that testimony, Dr. Sliskovich recounted the claimant's continuing emotional distress in the months following October of 1998 and opined that work-related stress was one of a variety of factors that led to the claimant's February 1999 stroke. EX M at 234-44. In explaining this opinion, Dr. Sliskovich asserted that stress is a "contributing factor" in hypertension and contended that episodic surges in blood pressure tend to put extreme pressure on arteries. EX M at 237.

Dr. Kalafut's opinion regarding the cause of the claimant's impairments is contained in a letter she sent to the claimant's counsel on December 14, 2000. CX 7 at 69. In that letter, she opined as follows:

The stroke Mr. Willis suffered in February 1999 was in part caused by hypertension. It is likely that the stress he was experiencing in the work environment accelerated his hypertension and contributed to the stroke.

Dr. Kalafut, however, did not provide any further explanation for her opinion.

Dr. Jay's opinion concerning the claimant's stroke-related impairments is contained in his report of April 30, 2001 and in his post-trial deposition testimony. CX 5 (April 30, 2001 report), CX 12 (deposition testimony). As previously noted, in his written report Dr. Jay opined that the cumulative stress

of the claimant's job contributed to the development of his hypertension and the hypertension in turn contributed to a total occlusion of the claimant's left internal carotid artery and the resulting stroke. In the post-trial deposition, Dr. Jay supported his opinion by quoting a passage from the 2001 edition of a medical text book called *The Heart*. The passage states that "BP [blood pressure] is directly related to left ventricular hypertrophy (LVH) and heart failure (HF), peripheral vascular disease (PVD), *carotid atherosclerosis*, renal disease, and 'subclinical disease'" (emphasis added). CX 12 at 9-10. Dr. Jay further testified that leading medical textbooks and journals have published material indicating that cumulative emotional stress contributes to the development of hypertension. *Id.* at 11, 20. He also opined that the claimant's statements and medical records indicate that he suffered from work-related stress. *Id.* at 11, 18. In addition, Dr. Jay asserted that sudden elevations of blood pressure can cause an embolic stroke by dislodging small clots of plaque in the carotid arteries. *Id.* at 14-15.

I find that the foregoing opinions of Dr. Slikovich, Dr. Kalafut, and Dr. Jay are sufficient to warrant invocation of a subsection 20(a) presumption that the claimant's February 1999 stroke was the result of the total occlusion of his left internal carotid artery and that the development of the occlusion was at least accelerated by cumulative incidents of work-related stress.

The employer's contention that the claimant did not suffer a work-related injury is based primarily on the testimony and written reports of two physicians: Dr. Grodan and Dr. Rosove. Both physicians have pointed out that there are two basic types of strokes---hemorrhage strokes in which blood leaks out of blood vessels and occlusion or embolic strokes in which parts of a patient's brain are denied blood due to a blockage which reduces the flow of blood through a vessel. Tr. at 352-54 (testimony of Dr. Rosove), Tr. at 207 (testimony of Dr. Grodan). Because the claimant's strokes were of the second type and involved an occlusion, they have opined, his strokes were not in any way caused, accelerated or aggravated by work-related stress. Tr. at 352, 355, 371 (testimony of Dr. Rosove), Tr. at 230, 239-40, 250, 262 (testimony of Dr. Grodan). Rather, they contend, the strokes were due solely to other factors, such as the anti-phospholipid syndrome that caused the claimant's blood to be hyper-coagulable and the claimant's history of smoking. Tr. at 350, 354-56 (testimony of Dr. Rosove), Tr. at 227-30, 241 (testimony of Dr. Grodan). Both Dr. Grodan and Dr. Rosove also testified that there is no scientific evidence that stress has any sort of causal relationship to the kind of stroke suffered by the claimant. Tr. at 354 (testimony of Dr. Rosove), Tr. at 239-40 (testimony of Dr. Grodan).

In addition, Dr. Rosove opined that even if the claimant had suffered from work-related stress, it would not have caused blood clotting or the type of changes seen in the claimant's carotid arteries. Tr. at 355. He also asserted that "stress can cause very temporary elevations in blood pressure, but does not result in the development or causation of a sustained hypertension syndrome that persists for a long period of time, which is required to develop arteriosclerosis." Tr. at 359. Dr. Rosove also disagreed with the idea that sustained stress could cause a person to have higher than normal blood pressure for a prolonged period. Tr. at 365, 369. In fact, he opined, "stress is not going to be a risk factor for any kind of sustained hypertension" and asserted that he would "rule it out as being as close to medically impossible as I would be permitted to say." Tr. at 365, 369.

I find that the opinions of Dr. Grodan and Dr. Rosove are sufficient to rebut the subsection 20(a) presumption. Accordingly, it is next necessary to consider all of the relevant evidence to determine if a causal relationship between the claimant's employment and his stroke-related impairments has been established by a preponderance of the evidence. After so considering the evidence, I conclude that the claimant has shown by a preponderance of the evidence that mental stress he experienced while working at the employer's Tra-Pac facility did in fact cause, aggravate, accelerate, or otherwise permanently worsen his stroke-related impairments. There are six reasons for this conclusion.

First, both a chest x-ray and an EKG taken in December of 1998 showed physiological changes indicating that the claimant had been suffering from sustained hypertension for at least five or ten years. EX M at 240 (testimony of Dr. Sliskovich). No medical expert has disputed this evidence and both Dr. Grodan and Dr. Rosove have explicitly acknowledged that the claimant's medical history included a prolonged period of sustained hypertension. Tr. at 232 (testimony of Dr. Grodan), Tr. at 350, 356 (testimony of Dr. Rosove).

Second, the claimant's testimony concerning the stress generated by his job is credible and is, for the most part, corroborated by the testimony of other witnesses. For example, although there is conflicting evidence on the question of whether Tra-Pac's manager frequently threatened to find a new company to provide maintenance and repair services, this same manager (Frank Pisano) has acknowledged that there was in fact "considerable friction" between the claimant and the mechanics he supervised.<sup>2</sup> EX R at 29-41. Likewise, Mr. Schwoeble acknowledged that, in addition to working at least eight hours a day on week days, the claimant also often had to work on Saturdays and Sundays. EX S at 22. Moreover, the testimony of Dr. Sliskovich, Mr. Pisano, Mr. Schwoeble, and Mr. Outland strongly corroborates the claimant's assertion that his level of work-related stress was substantially increased by the allegations that he was operating an off-site repair facility.

Third, the medical evidence shows that stressful job events periodically caused the claimant's blood pressure to increase to dangerously high levels. The most vivid example of such a relationship is found in Dr. Sliskovich's records and testimony concerning the physical manifestations of the claimant's reaction to the allegations that he had been operating an off-site repair facility. As previously noted, this evidence indicates that even several months after the allegations were first made the claimant was still so upset that he was impelled to seek treatment from Dr. Sliskovich. At that time (October of 1998) the claimant was literally shaking and his blood pressure had increased to 170/110. Even a week later, Dr. Sliskovich's

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<sup>2</sup>Although Mr. Pisano denied the claimant's allegations that he frequently threatened to terminate Tra-Pac's contract with the claimant's employer, another witness, Michael Outland, provided testimony suggesting that Mr. Pisano did in fact frequently refer to the possibility of hiring another company to provide maintenance and repair services. EX R at 10, 13 (testimony of Mr. Pisano), CX 14 at 16-18 (testimony of Michael Outland).

records show, the claimant's blood pressure was still an abnormally high 150/90 and he was still complaining of dizziness and ringing in his ears.

Fourth, the evidence indicates that there is a well recognized causal relationship between sustained hypertension and the progression of arteriosclerosis, including carotid artery arteriosclerosis. CX 12 at 8-9 (testimony of Dr. Jay). Indeed, even Dr. Rosove concedes that the claimant had a long history of sustained hypertension and that this sustained hypertension was one of the factors that produced the arteriosclerosis that narrowed the claimant's carotid arteries. Tr. at 350, 356.

Fifth, the weight of the medical evidence indicates that the claimant's stroke was the indirect result of arteriosclerosis in the claimant's interior carotid arteries and that the stroke was thereby hastened by the progression of this arteriosclerosis. CX 12 at 8-9 (testimony of Dr. Jay). In fact, none of the medical experts has disputed the relationship between the claimant's strokes and the arteriosclerosis of his carotid arteries.

Sixth, the opinions of Dr. Sliskovich, Dr. Kalafut, and Dr. Jay that the claimant's work-related stress probably aggravated his sustained hypertension and thereby accelerated the progression of his arteriosclerosis are more convincing than the contrary opinions of Dr. Grodan and Dr. Rosove. In this regard, it is noted that although both Dr. Kalafut and Dr. Rosove were involved in the claimant's treatment, Dr. Kalafut's opinion on this subject is entitled to greater weight because she had a far greater role in the treatment and because she is the only one of these two physicians whose practice is focused on the treatment of strokes. It is further noted that even if Dr. Grodan and Dr. Rosove are correct in their assertions that stress cannot cause a person to have sustained hypertension, they have not provided convincing reasons for rejecting the opinions of those medical witnesses who have in effect opined that even episodic stress-related blood pressure increases in a person who has sustained hypertension can at least temporarily worsen the condition and thereby accelerate the progression of hypertension-related arteriosclerosis.

## 2. Occurrence of a Work-Related Back and Left Side Injury during Late August of 1999

As previously noted, the claimant asserts that he suffered a back and left-side injury while moving tools during late August of 1999. The employer contends that no such injury ever occurred and argues, in effect, that the alleged injury was feigned in response to the claimant's termination. In this regard, the employer asserts that the claimant did not report the alleged injury to anyone until after learning that he was being fired and contends that the claimant's medical records contradict his assertion that his August 31, 1999 appointment with Dr. Sliskovich had been scheduled for the purpose of treating his alleged back injury.

I find that the claimant's testimony and the medical reports of Dr. Sliskovich are sufficient to warrant invocation of a subsection 20(a) presumption that the claimant did in fact suffer a work-related injury while moving tools in late August of 1999. However, I also find that the inconsistencies between

the claimant's testimony on this subject and the testimony of Dr. Sliskovich and Mr. Eyman constitutes evidence which is substantial enough to rebut the presumption.<sup>3</sup> It is therefore necessary to determine whether the claimant has shown the occurrence of a work-related back injury by a preponderance of the evidence.

On balance, I find, a bare preponderance of the evidence supports the conclusion that the claimant probably did suffer some sort of minor exacerbation of his stroke-related impairments when moving tools in late August of 1999. There are several reasons for this conclusion. First, all parties appear to agree that the claimant and Mr. Eyman did in fact move a number of heavy tools between two trucks in late August of 1999. Second, the medical evidence clearly shows that the claimant's February 1999 stroke significantly weakened his left arm and leg and thereby made him less able to engage in the kind of physical labor involved in moving tools between trucks. Third, the evidence suggests that it is slightly more likely than not that the claimant's August 31, 1999 complaints to Dr. Sliskovich of left side and back symptoms were made before the claimant learned that he was being fired, thereby reducing the likelihood that the complaints were feigned for purposes of making a workers' compensation claim.

It is noted, however, that any injury the claimant may have suffered while moving tools was entirely temporary in nature and did not result in any permanent aggravation of his stroke-related injury. This conclusion is supported by Dr. London's reports and by Dr. Sliskovich's testimony that the claimant's condition has been "fairly stationary" and has not deteriorated noticeably since his February 1999 stroke. EX M at 236, 238 (testimony of Dr. Sliskovich), EX C (reports of Dr. London).

### 3. Nature and Extent of Disability

The claimant contends that he is permanently and totally disabled as a result of his work-related injuries. The employer, on the other hand, contends that the claimant has not in fact suffered any loss of earning capacity and therefore does not have any compensable permanent disability.

Any claimant who contends that he is totally disabled has the burden of proving a *prima facie* case of total disability by showing that he cannot return to his regular employment due to his work-related injury. *Bumble Bee Seafoods v. Director, OWCP*, 629 F.2d 1327 (9th Cir. 1980); *Trask v. Lockheed*

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<sup>3</sup>In this regard it is noted that Mr. Eyman's testimony contradicts the claimant's assertion that he complained to Mr. Eyman about the alleged injury the day after it happened. EX E at 68 (claimant's testimony), Tr. at 275 (testimony of Mr. Eyman). Likewise, the claimant's testimony that he reported a work-related injury to Dr. Sliskovich on August 31 is not corroborated by Dr. Sliskovich's treatment notes and is inconsistent with Dr. Sliskovich's October 29, 1999 response to a question on a State of California disability application form which asked if the claimant's disability was attributable to an industrial accident or occupational disease. EX E at 68, 73-74 (claimant's testimony), EX Q (disability application form), CX 6 at 42 and 46 (treatment notes and hand written note from Dr. Sliskovich).

*Shipbuilding Co.*, 17 BRBS 56, 59 (1980). If the claimant meets this burden, the employer must then establish the existence of specific and realistically available job opportunities within the geographic area where the employee resides which a person with the employee's technical and verbal skills is capable of performing. *Hairston v. Todd Shipyards*, 849 F.2d 1194 (9th Cir. 1988); *Stevens v. Director, OWCP*, 909 F.2d 1256 (9th Cir. 1990). However, an employer need not show the existence of specific and realistically available job opportunities if the employer itself offers the claimant a bona fide job that the claimant is capable of performing. *Darby v. Ingalls Shipbuilding, Inc.*, 99 F.3d 685 (5th Cir. 1996); *Diosdado v. Newpark Shipbuilding & Repair, Inc.*, 31 BRBS 70 (1997). Under subsection 8(h) of the Act, a worker's actual post-injury earnings shall be considered indicative of his or her post-injury earning capacity unless such actual earnings do not "fairly and reasonably represent" the worker's wage-earning capacity. *Devillier v. National Steel and Shipbuilding Co.*, 10 BRBS 649, 660 (1979). Any party which contends that a claimant's post-injury earnings are not representative of his or her true wage-earning capacity has the burden of proving that those earnings are not representative. *Burch v. Superior Oil Co.*, 15 BRBS 423, 427 (1983); *Bethard v. Sun Shipbuilding and Dry Dock Co.*, 12 BRBS 691, 693 (1980).

In this case, the evidence shows that the claimant continued to work in his job as a maintenance and repair manager for approximately six months following his February 1999 stroke. Moreover, as previously determined, any aggravation of the claimant's impairment resulting from the August 1999 injury was only temporary. Hence, it might appear that the claimant is entitled only to temporary disability benefits and has failed to show entitlement to permanent disability benefits.

However, the claimant has submitted opinions from Dr. Jay and Dr. Sliskovich which suggest that his attempt to continue working as a maintenance manager after his February 1999 stroke was medically inadvisable. For example, Dr. Jay's report of April 30, 2001 gives two reasons for such a conclusion. First, the report indicates that the limitations in the claimant's ability to use his left leg and arm restrict him to sedentary work. CX 5 at 36. Second, the report suggests that the claimant should also be prophylactically precluded from working in emotionally stressful environments in order to avoid aggravating his sustained hypertension. *Id.* Likewise, Dr. Sliskovich has opined that the claimant is medically precluded from performing the duties of his former job because his left side weakness makes it "unsafe for him to be around heavy equipment or heavy physical work." EX M at 239.

In addition, the claimant has provided testimony suggesting that it was only through extraordinary effort that he was able to continue to perform his job after his February 1999 stroke. For instance, he testified that even though his job did not require him to engage in "heavy work," after his stroke he was continually tired and was constantly "pushing, pushing, pushing" in order to keep up with his job. Tr. at 75-76 (claimant's testimony that his job did not require him to perform heavy work), Tr. at 154 (claimant's testimony that after his stroke he was "getting tired a lot, really tired"), EX E at 66 (claimant's testimony that he was "really tired" after his stroke, but kept "pushing, pushing, pushing" to perform his job). In fact, the claimant's testimony indicates that after his stroke he told his supervisor, Herb Kasoff, that if his work load wasn't reduced the employer would have to "find somebody else." Tr. at 146. The contention that

the claimant was unable to adequately perform his job after the February 1999 stroke is corroborated to some extent by the fact that he was fired only six months after the stroke due to job performance deficiencies that had not occurred in the years preceding the stroke.<sup>4</sup> Indeed, the record indicates that during the years preceding the claimant's February 1999 stroke, he had consistently received positive job evaluations, raises and bonuses. Tr. at 71-72 (testimony of the claimant), EX S at 4-5 (testimony of Randy Schwoeble that the claimant was considered to be a "good employee" and that until receiving complaints from Tra-Pac in the summer of 1999 he had no problems with the claimant's job performance).

The only evidence offered by the employer to show that the claimant is not medically precluded from returning to work as a manager of maintenance is found in the report and testimony of Dr. Grodan. According to a statement in Dr. Grodan's report of February 21, 2001, continuation of the claimant's employment would not cause "any higher risk of further complications." EX D at 33. Likewise, during the trial Dr. Grodan testified that in his opinion, if the claimant had not been fired from his job in August of 1999, he would still be working as a maintenance manager. Tr. at 269. However, Dr. Grodan's opinion about the risk of further complications seems to be directly contradicted by his trial testimony acknowledging the claimant's history of sustained hypertension and noting that such a medical history creates "at least a prophylactic undue stress preclusion." Tr. at 270. As well, it also conflicts with his testimony that patients who have suffered a heart attack or a stroke should generally avoid high stress. Tr. at 255.

After considering all of the foregoing evidence, I find that the claimant's continued employment as a maintenance manager following his February 1999 stroke was inconsistent with prophylactic medical preclusions against performing such work and therefore further find that the claimant has met his burden of demonstrating by a preponderance of the evidence that he is unable to continue performing his pre-injury job due to his work-related injury. *Care v. Washington Metropolitan Area Transit Authority*, 21 BRBS 248 (1988) (holding that a physician's opinion that an injured worker's return to his usual work would aggravate the worker's medical condition is sufficient to support a finding of total disability). For this same reason, I also find that the claimant has met his burden of showing that the wages he earned in the six month period following his February 1999 stroke were not representative of his true wage earning capacity. *See also Lewis v. Haughton Elevator Co.*, 5 BRBS 62, at 68, *aff'd sub. nom Haughton Elevator Co. v. Lewis*, 572 F.2d 447 (4<sup>th</sup> Cir. 1978) (holding that "it would be unfair to penalize [a] claimant by denying him compensation for permanent total disability because he made an extraordinary effort to keep working"). Thus, because the defendants have not offered any evidence purporting to show the availability of suitable alternative employment, it is necessary to conclude that the claimant has been permanently and totally disabled since the stipulated date of maximum medical improvement: August 31, 1999.

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<sup>4</sup>In this regard, it is noted that the evidence does not support an inference that the claimant was terminated from his job because of a reasonable belief that he had stolen from Tra-Pac. Rather, the evidence suggests that he was fired for failing to detect and prevent thefts by other workers under his supervision.

#### 4. Entitlement to Special Fund Relief

In order to obtain relief from the Special Fund under subsection 8(f) of the Act an employer must show: (a) that the claimant had a permanent partial disability prior to his or her work-related injury, (b) that the pre-existing disability was manifest prior to that injury, and (c) that the pre-existing disability contributed to the claimant's ultimate permanent disability in the specific manner prescribed in the Act. *Director, OWCP v. Campbell Industries, Inc.*, 678 F.2d 836 (9th Cir. 1982). For the reasons set forth below, I find that each of the foregoing requirements has been satisfied and that the employer is therefore entitled to 8(f) relief.

##### A. Existence of a Pre-Existing Permanent Disability.

As noted, the first of the three requirements for obtaining subsection 8(f) relief is a showing by the employer that prior to the claimant's work-related injury the claimant had a pre-existing permanent partial disability. Such a pre-existing disability, however, need not be economically disabling or require medical treatment in order to constitute a permanent partial disability within the meaning of subsection 8(f). *See C&P Telephone Co. v. Director, OWCP*, 564 F.2d 503, 513 (D.C. Cir. 1977); *Director, OWCP v. Campbell Industries, Inc.*, *supra*. *See also Todd Pacific Shipyards v. Director, OWCP*, 913 F.2d 1426 (9th Cir. 1990); *Currie v. Cooper Stevedoring Co.*, 23 BRBS 420, 426 (1990). Rather, it is sufficient to show that, "because of a greatly increased risk of employment related accident and compensation liability," the pre-existing condition would motivate a cautious employer to discharge or refrain from hiring the employee. *See C&P Telephone Co. v. Director, OWCP*, *supra*. In this case, the primary evidence of a pre-existing disability consists of Dr. Sliskovich's testimony that a chest x-ray and EKG taken in December of 1998 revealed changes in the claimant's heart indicating that the claimant suffered from "hypertension of a semi-longstanding nature." EX M at 221, 224. In view of this evidence, I find it to be more likely than not that a cautious employer would be motivated to discharge a person with such a condition due to a fear of potential workers' compensation liability. *Director, OWCP v. General Dynamics Corp.*, 787 F.2d 723 (1<sup>st</sup> Cir. 1986); *Dugan v. Todd Shipyards*, 22 BRBS 42 (1989). Accordingly, I find that the first prerequisite for subsection 8(f) relief has been met.

##### B. Evidence Disability Was Manifest.

The second requirement for subsection 8(f) relief is a showing that the claimant's pre-existing disability was "manifest" to the employer prior to the subsequent injury. *Director, OWCP v. Cargill, Inc.*, 709 F.2d 616 (9th Cir. 1983). This requirement can be met by showing either that the employer had actual knowledge of the condition or that there were medical records in existence prior to the subsequent injury from which the claimant's condition was objectively determinable. *Todd v. Todd Shipyards Corp.*, 16 BRBS 163 (1984). The medical records need not indicate the precise nature of the pre-existing condition, including its permanency, so long as they contain information regarding the existence of a serious lasting problem that would motivate a cautious employer to consider terminating the employee because of the risk of future compensation liability. *Lockhart v. General Dynamics Corp.*, 20 BRBS 219, 225 (1988), *aff'd*

*sub. nom Director, OWCP v. General Dynamics*, 980 F.2d 74 (1st Cir. 1992). In addition, the records do not have to show that the condition was symptomatic or that the condition would actually impair a person's ability to work. *Director, OWCP v. Berkstresser*, 921 F.2d 306, 310 (D.C. Cir. 1991). In this case, the testimony of Dr. Sliskovich indicates that the claimant's longstanding sustained hypertension was objectively determinable from the results of a chest x-ray and an EKG that were performed in December of 1998. Hence, I find that the second requirement for subsection 8(f) relief has also been met.

### C. Contribution to the Ultimate Permanent Disability.

The third requirement for obtaining subsection 8(f) relief is proof that the pre-existing disability contributed to the claimant's ultimate permanent disability in the manner prescribed in the Act. There are two aspects of this requirement. First, the employer must establish that the ultimate disability is not due solely to the subsequent injury, regardless of whether the ultimate permanent disability is either partial or total. See 20 C.F.R. §702.321(a)(1)(iv). In interpreting this requirement, the courts have held that even if a claimant's pre-existing disability combined with a work-related injury to create a greater disability than the work-related injury would have caused by itself, subsection 8(f) relief is still precluded if the work-related injury alone would have been totally disabling. See *FMC Corp. v. Director, OWCP*, 886 F.2d 1185 (9th Cir. 1989); *Director, OWCP v. Luccitelli*, 964 F.2d 1303 (2nd Cir. 1992); *Two "R" Drilling Co. v. Director, OWCP*, 894 F.2d 748 (5th Cir. 1990). Second, when an ultimate permanent disability is only partial rather than total, the employer must also establish that the disability is materially and substantially greater than the disability that would have resulted from the subsequent injury alone. See 20 C.F.R. §702.321(a)(1). When seeking to determine whether this requirement has been satisfied, a fact finder should consider what level of disability would have resulted from a claimant's work-related injury if the claimant had not already had a pre-existing disability at the time of the injury. See *Director, OWCP v. Newport News Shipbuilding & Dry Dock Co. (Harcum)*, 8 F.3d 175, 185 (4th Cir. 1993); *Director, OWCP v. Newport News Shipbuilding & Dry Dock Co. (Carmines)*, 138 F.3d 134 (4<sup>th</sup> Cir. 1998).

In this case, the medical evidence indicates that the claimant's February 1999 stroke and resulting impairment were not the result of a single traumatic injury, but were instead manifestations of an on-going series of stress-related injuries to the claimant's cardiovascular system that were relatively minor when considered individually, but totally disabling on a cumulative basis. For this reason, I find that the final individual injury in this on-going series of minor cumulative trauma injuries would not have by itself been totally disabling. I thus find that the contribution requirement has been satisfied and therefore further conclude that the employer is entitled to subsection 8(f) relief. See *Director, Office of Workers' Compensation Programs v. Todd Shipyards*, 625 F.2d 317 (9<sup>th</sup> Cir. 1980) (holding that subsection 8(f) applies to disabilities caused by non-traumatic occupational diseases).

## ORDER

1. The employer shall pay the claimant total permanent disability compensation for the period beginning on August 31, 1999 and ending 104 weeks thereafter at a compensation rate of \$871.76 per week plus annual adjustments under the provisions of 33 U.S.C. 910(f).

2. Beginning 104 weeks from August 31, 1999 and until ordered otherwise, the Special Fund shall pay the claimant permanent partial disability compensation of \$871.76 per week plus annual adjustments under the provisions of 33 U.S.C. 910(f).

3. The employer and the Special Fund shall pay interest to the claimant on each unpaid installment of compensation from the date the compensation became due at the rates specified in 28 U.S.C. §1961.

4. The District Director shall make all calculations necessary to carry out this order.

5. The employer shall provide the claimant all medical care that may in the future be reasonable and necessary for the treatment of the sequelae of his compensable injuries of February and August 1999.

6. The counsel for the claimant shall within 20 days after this order is served submit a fully supported application for costs and fees to the counsel for the employer and to the undersigned Administrative Law Judge. Within 15 days thereafter, the counsel for the employer shall provide the claimant's counsel and the undersigned Administrative Law Judge with a written list specifically describing each and every objection to the proposed fees and costs. Within 15 days after receipt of such objections, the claimant's counsel shall verbally discuss each of the objections with the counsel for the employer. If the two counsel thereupon agree on an appropriate award of fees and costs, they shall file a written statement setting forth the agreed-upon fees and costs. Alternatively, if they disagree on any of the proposed fees and costs, the claimant's counsel shall, within 25 days after receiving the list of the employers' objections, file a fully documented petition listing those fees and costs which are in dispute and set forth a statement of his position regarding such fees and costs. Such petition shall also specifically identify those fees and costs which have not been disputed by the counsel for the employer. The counsel for the employer shall have 15 days from the date of service of such application in which to respond. No reply to that reply will be permitted unless specifically authorized in advance.

A  
Paul A. Mapes  
Administrative Law Judge

